

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE,  
AND THE DELAWARE ENERGY OFFICE  
THE OFFICE OF MANAGEMENT AND BUDGET  
AND THE CONTROLLER GENERAL**

IN THE MATTER OF INTEGRATED RESOURCE )  
PLANNING FOR THE PROVISION OF )  
STANDARD OFFER SUPPLY SERVICE BY )  
DELMARVA POWER & LIGHT COMPANY ) PSC DOCKET NO. 06-241  
UNDER 26 DEL. C. § 1007(c) & (d): REVIEW )  
AND APPROVAL OF THE REQUEST FOR )  
PROPOSALS FOR THE CONSTRUCTION OF )  
NEW GENERATION RESOURCES UNDER )  
26 DEL. C. §1007(d) (Opened July 25, 2006) )

**NRG ENERGY INC.'S RESPONSE TO DELAWARE PUBLIC SERVICE  
COMMISSION STAFF RESPONSE IN OPPOSITION TO CONECTIV ENERGY  
SUPLY, INC.'S PETITION FOR REHEARING AND RECONSIDERATION**

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June 25, 2007

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1. NRG Energy, Inc. ("NRG") submits these comments in response to the Delaware Public Service Commission Staff ("Staff") Response to Conectiv Energy Supply, Inc.'s ("CESI") Petition for Rehearing and Reconsideration filed with the Commission, the Delaware Energy Office, the Office of Management and Budget and the Controller General ("the State Agencies") on June 18, 2007 ("Staff's June 18 Filing"). As set forth below, NRG takes exception to one statement in Staff's June 18 Filing and urges the State Agencies to reaffirm their conclusion that Pursuant to Order No. 7199, any proposed facility for back-up generation must be located in Sussex County, Delaware.

**I. PROCEDURAL HISTORY**

2. On May 22, 2007, the State Agencies issued Order No. 7199, in which they adopted and approved the May 2, 2007 "PSC Staff Review and Recommendations on

Generation Bid Proposals” (the “Staff Report”), “except as specifically addressed to the contrary” in the Order. The entry of Order No. 7199 followed six hours of open deliberations on the Staff Report on May 8, 2007, where the Commission unanimously voted to accept Staff’s Report with certain modifications based on testimony received at the May 8, 2007 hearing. On May 22, 2007, the State Agencies convened again and unanimously approved Order No. 7199 affirming the Commission’s May 8, 2007 voice vote, and making some minor alterations to the Order based on testimony received at the May 22, 2007 meeting.

3. Among other things, Order No. 7199 directed Delmarva Power & Light Company (“Delmarva”) to negotiate in good faith with BlueWater Wind, LLC (“Bluewater”), CESI and NRG (together with Delmarva, the “Parties”) for a hybrid energy supply that combines the environmental benefits of the Bluewater windfarm proposal with the necessary and required reliability of a CESI or NRG back up generation facility sited in Sussex County, Delaware (“Hybrid Proposal”). On May 30, 2007, the Parties began negotiations, and have already exchanged confidential information and will soon submit revised proposals that reflect the mandate of Order No. 7199

4. On June 11, 2007, CESI filed a Petition for Rehearing and Reconsideration pursuant to Rule 34 of the Delaware Public Service Commission’s Rules of Practice and Procedure requesting, among other relief, that the State Agencies permit Delmarva to negotiate with CESI for back up generation power from CESI’s proposed Hay Road facility in New Castle County. CESI Petition, ¶70.

5. On June 18, 2007, Staff filed its response entitled the Delaware Public Service Commission (“Commission”) Staff Response to Conectiv Energy Supply, Inc.’s (“CESI”) Petition for Rehearing and Reconsideration and argued that CESI’s Rule 34 Petition

for rehearing and reconsideration should be denied in its entirety and that Order No. 7199 should be affirmed. Staff's June 18, 2007 Filing also noted that Order No. 7199 does not "preclude CESI from establishing a generation facility in southern Delaware or demonstrating that its Hay Road site meets reliability requirements." Staff's June 18 Filing, ¶22 at pp. 12-13.

This is NRG's response to Staff's June 18 Filing.

## **II. DISCUSSION**

6. First and foremost, NRG concurs with Staff's reasoning and conclusion that the State Agencies should deny CESI's Petition for Rehearing and Reconsideration in its entirety and affirm Order No. 7199. NRG has no interest in having an opportunity to submit a bid to construct an offshore windfarm. Bluewater Wind LLC has undertaken the risk and invested the effort in such a project and NRG (which is in the wind power business) could have, but chose not to submit such a bid and will not do so now. It is time to move on to address the issues of concern to Delaware. Since Order No. 7199 was issued on May 22, 2007, the Parties, including presumably CESI, have invested considerable time and money in negotiating in good faith with Delmarva, and the State Agencies should swiftly deny CESI's motion for reconsideration so that the parties may continue to proceed with negotiations.

7. NRG does, however, take exception to the statement in Staff's June 18 Filing -- that the State Agencies' decision does not preclude CESI from "demonstrating that its Hay Road site meets reliability requirements" and therefore CESI's Hay Road proposal is a possible location for the backup generation facility for the windfarm. Staff's Filing, ¶ 22 at 12-13. The May 22, 2007 Order leaves open no such possibility, and in order to assure that negotiations are meaningful and to move towards finalizing a long-term PPA and securing Delaware's energy future, it is important that the State Agencies reaffirm that, in order to satisfy

the intent of EURCSA and of the State Agencies, any proposal for the backup generation facility to support the off shore windfarm must be located in Sussex County.

**A. The May 2, 2003 Staff Report Requires the Back Up Generation Facility Be Located in Sussex County**

8. In the May 22, 2007 Order the State Agencies specifically adopted and approved the May 2, 2007 PSC Staff Review and Recommendations on Generation bid Proposals (“Staff Report”) “except as specifically addressed to the contrary” in Order No. 7199. Order No. 7199, ¶1 of the Order, at page 32. The Staff Report could not be more clear. It recommended that Delmarva be directed to negotiate in good faith for a hybrid energy supply that combines the environmental benefits of the off shore wind farm with the reliability and reactive support of a backup generation plant located in Sussex County. Staff Report at pp. 5, 64-65, 66, 69 (emphasis added).

9. The Staff report was well-reasoned and was premised on several inescapable conclusions. First, the lack of transmission capacity and native generation located in southern Delaware is a real concern, both with respect to increasing capacity costs and maintaining system reliability. Staff Report at pp. 5, 65, 66, 69. Part of Staff’s rationale in reaching this conclusion was the 2003 Delaware Energy Task Force report which highlighted the rapid population growth and corresponding energy demand in Sussex County, and recommended developing a plan to address both short and long term energy issues. Staff Report at p. 63. Second, and more importantly, Staff’s recommendation was premised on the study Staff requested from PowerWorld Inc. (“PowerWorld Study”), which addressed system reliability by analyzing four generation contingency scenarios and the impact each would have on overall PJM system reliability. Staff Report at pp. 56-58. The PowerWorld Study concluded broadly that in order to enhance system reliability it was desirable to add a base load plant or a combination of

wind with backup gas turbine capacity in southern Delaware. Staff Report at p. 4 (emphasis added). The PowerWorld Study also concluded that CESI's Hay Road facility had a minimal impact on system reliability because it is located too far north to truly help for reliability purposes. Staff Report at p. 58, *citing*, The PowerWorld Study at p. 38.

**B. Order No. 7199 Does Not Specifically Address to the Contrary the Required Siting of the Back-Up Generation Facility in Sussex County**

10. Nothing in the May 22, 2007 Order specifically contradicts or overrides the conclusion in the Staff Report that the back-up generation facility must be located in Sussex County. The May 22, 2007 Order makes clear that one of the primary goals of EURCSA is to enter into short and long-term contracts for the procurement of power necessary to serve its customers. Order No. 7199, at page 3, citing, 26 Del. C. §1007(b)(1)-(5). As noted above, Staff's Report highlights the growing energy demand in Sussex County and Staff's recommendation is designed to address that increasing energy demand in southern Delaware. Additionally, Paragraph 56 of the Order directs Delmarva to negotiate with CESI and NRG to provide backup firming power. The Order notes that NRG's bid may "compare favorably due to NRG's pre-existing location in Sussex County, obviating the need to site a new power plant outside of an existing brownfield." Order No. 7199, ¶56 at p. 30. This demonstrates that the State Agencies were in agreement with Staff's Report and Recommendation regarding the siting of the backup generation facility in Sussex County. Besides allowing NRG a seat at the negotiating table, the only other variation from Staff's Report with respect to the back-up generation facility was that the State Agencies not foreclose an alternative to gas being the technology used for the backup generation facility. Order No. 7199, ¶56 at p. 30. The Order nowhere "specifically addresses to the contrary" Staff's recommendation to locate back up generation in Sussex County.

C. **The Transcripts of the Nearly Ten Hours of Deliberations on The Staff Report and Order No. 7199 Do Not Alter the Conclusion that the Back-Up Facility Must Be in Sussex County**

11. A review of the transcripts of the May 8, 2007 and May 22, 2007 deliberations by the State Agencies unequivocally supports the conclusion that the back-up generation facility must be located in Sussex County, Delaware. Nowhere in the transcript of the State Agencies May 8, 2007 and May 22, 2007 deliberations is there any discussion of siting the backup generation at CESI's proposed Hay Road site (or any where besides Sussex County for that matter). On the contrary, as Commissioner Winslow noted during the deliberations on May 22, 2007 the Commission "believes pretty strongly" that the backup gas firming generation facility should be located in Sussex County, and that generation in Sussex County is the goal. 5/22/07 Tr. at 1861-1862.

12. Moreover, all of the deliberations at the May 8, 2007 and May 22, 2007 meetings were based on the assumption that the backup generation facility would be located in Sussex County, Delaware. Until its June 11, 2007 Motion for Rehearing and Reconsideration CESI had not objected to siting a back-up firming plant in Sussex County (5/807 Tr. at 1698-1700). In fact, at the May 8, 2007 hearing, Richard Purcell of Conectiv was asked point blank by Commissioner Clark whether CESI was opposed to negotiating with Delmarva regarding siting their CCGT facility at a different location, Mr. Purcell responded "No, sir, we are not. We look forward to the negotiations." 5/8/2007 Tr. at 1698-1699. In addition, CESI apparently indicated its desire to be part of Staff's hybrid proposal in the first instance via an April 16, 2007 letter to the Commission (which NRG has yet to see). 5/807 Tr. at 1765.

**D. The Parties Have Proceeded with Negotiations for Over A Month Based on the Assumption that the Back-Up Facility Must be in Sussex County**

13. Since the May 22, 2007 Order was issued, all of the Parties have been proceeding with the negotiations, presumably in “good faith”, under the premise that the ultimate directive is to negotiate for a hybrid energy supply that combines the environmental benefits of the offshore windfarm with the reliability and reactive support of a firming solution located in Sussex County. CESI’s own motion for reconsideration makes this point, noting that in the May 22, 2007 Order the State Agencies “rejected the Hay Road Proposal as a possible source of back-up gas-fired power, instead directing CESI to compete with NRG for a gas-fired plant in Sussex County.” CESI June 11, 2007 Petition for Rehearing and Reconsideration, ¶41 at pp. 14-15.

14. In a covering E-mail forwarding Delmarva’s notice of appeal of Order No. 7199 to the interested parties in PSC Docket No. 06-241, Anthony C. Wilson, PEPCO Holdings Assistant General Counsel wrote:

Delmarva Power & Light Company (“Delmarva Power”) today filed a notice of appeal of the May 22, 2007 decision of the Delaware Public Service Commission and certain other state agencies which directed Delmarva Power to negotiate a power purchase agreement with BlueWater Wind and to negotiate backup agreements with NRG and Conectiv Energy for gas fired generation to be located in Sussex County, Delaware. (emphasis added).

According to CESI’s petition, during negotiations, Delmarva has accepted the terms of the Order and refused to entertain any discussion of the possibility of siting the back-up generation anywhere other than in Sussex County. CESI petition, at p. 24 FN 11. To now open the door to the possibility that the backup generation facility could be located anywhere in Delaware undermines the negotiations to date, and requires the parties to go back to the drawing board and start anew. NRG believes the May 22, 2007 Order adopting Staff’s Report is clear, and that the



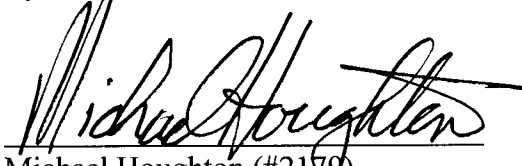
backup generation facility part of Staff's hybrid proposal which was adopted in Order No. 7199 must be located in Sussex County.

**WHEREFORE**, for the reasons set forth herein, NRG respectfully requests that the State Agencies reaffirm the May 22, 2007 Order and its adoption of Staff's recommendation that any proposed facility for back-up generation to support the Bluewater off shore windfarm must be located in Sussex County, Delaware.

Respectfully submitted,

NRG Energy, Inc.

By Counsel

A handwritten signature in black ink, appearing to read "Michael Houghton", written over a horizontal line.

Michael Houghton (#2179)

Geoffrey A. Sawyer, III (#4754)

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June 25, 2007

**CERTIFICATE OF SERVICE**

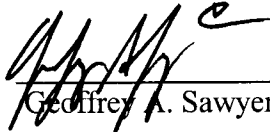
I, Geoffrey A. Sawyer, III, Esquire, do hereby certify that true and correct copies of the foregoing **NRG ENERGY INC.'S RESPONSE TO DELAWARE PUBLIC SERVICE COMMISSION STAFF RESPONSE IN OPPOSITION TO CONECTIV ENERGY SUPPLY, INC.'S PETITION FOR REHEARING AND RECONSIDERATION** were caused to be served on June 25, 2007 upon the following in the manner indicated:

**BY E-MAIL**

E-mail Service List for PSC Docket 06-241

**BY FEDERAL EXPRESS**

Ms. Karen J. Nickerson  
Delaware Public Service Commission  
861 Silver Lake Boulevard  
Suite 100  
Dover, DE 19904  
**(Original and 10 copies)**  
**(For Delivery Tuesday, June 26, 2007)**

  
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Geoffrey A. Sawyer, III (#4754)

June 25, 2007